

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN THE APPLICATION OF:

ANTHONY BRUCE PIKE

DATE: **July 18, 2011**

CASE NO.: **16-978P/US**

APPLICATION NO.: **10/561,752**

CONFIRMATION NO.: **1633**

GROUP ART UNIT: **3772**

FILED: **JANUARY 26, 2006**

EXAMINER: **KERI JESSICA
NICHOLSON**

FOR: **MEDICAL PROTECTION SHEETING**

PETITION PURSUANT TO 37 C.F.R. §1.181

Mail Stop: PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Petition is submitted in response to the Non-Final Office Action mailed May 18, 2011, which included a Requirement for Information pursuant to 37 C.F.R. §1.105. Applicant respectfully submits that this Petition is timely filed as it is filed within two months of the mailing date of the Office Action.

Applicant requests withdrawal of the Requirement for Information in view of the following remarks.

Statement of Facts begins on page 2 of this paper.

Points to be Reviewed begin on page 3 of this paper.

Action Requested begin on page 5 of this paper.

Statement of Facts

1. The present application has a priority date of June 24, 2003, a PCT filing date of June 24, 2004, and a 371 date of June 26, 2006.
2. The present application has had three non-final and one final rejection.
3. In the first Non-final Office action dated February 5, 2008, the Examiner referred to yarns identified as DuPont T743, T749, and 98Wext/4, which are useful with the Medical Sheeting of the present invention, as being "commercially available."
4. In response, a declaration was submitted pursuant to 37 C.F.R. §1.132 by John Barnes, an employee of INVISTA Textiles (UK) Ltd., who declared at paragraph 5 that "the materials identified by DuPont product numbers T743, T749 and 98Wext/4 ...were not commercially available in products related to the [present invention] prior to the Priority Date."
5. The division of DuPont that produced and sold airbag fibers identified as T743, T749, and 98Wext/4 was acquired by subsidiaries of Koch Industries, Inc. in April 2004 and is currently known as INVISTA.
6. In the Final Office action, dated March 18, 2011, the Examiner stated, "as best can be understood, the medical protection sheeting as claimed by the applicant is nothing more than a sheet of material providing the claimed properties that are found in materials made by DuPont."
7. In response, a declaration was submitted pursuant to 37 C.F.R. §1.132, by Michael George Clark, an executive director of APA Parafricta Ltd, who declared at paragraph 6, that the "The *DuPont Airbag Fibers* are in fact fibers, not woven articles as required by the present claims" and "The medical protection sheeting as claimed includes structural elements which are not met but the yarn alone. The medical protection sheeting includes a woven fabric and other structural limitations making the fabric suitable as bedding, slide sheets, clothing, and coverings for dressings."
8. In the Non-final Office Action dated May 18, 2011, the Examiner included a requirement for Information under 37 C.F.R. §1.105, at pages 23-24 which included five broad areas of information by the Applicant and Assignee as follows:

(a) the names of any products or services that have incorporated the claimed subject matter and Applicant is required to provide **Any and All** documentation that they are aware of regarding DuPont's development and prior use of the materials identified by DuPont product numbers T743, T749, and 98West/4.

(b) **Any and All** known documentation of Applicant's agreements with DuPont that they have regarding their agreements with DuPont to perform this testing for the preferred use of the materials identified by DuPont product numbers T743, T749, and 98West/4.

(c) **Any and All** known documentation of Applicant's and/or DuPont's common testing under their agreement with DuPont performed for the preferred use of the materials identified by DuPont product numbers T743, T749, and 98West/4.

(d) **Any and All** known documentation that set forth facts that support Applicant's argument that the materials identified in applicant's specification by DuPont product numbers T743, T749, and 98West/4 were not commercially available prior to the priority date of the instant application.

(e) **Any and All** known documentation that set forth facts that support Applicant's argument that the materials identified in applicant's specification by DuPont product numbers T743, T749, and 98West/4 were not known to use the example materials as medical protection sheeting.

Point to be Reviewed

The Requirement for Information under 37 C.F.R. §1.105 as outlined in the Office Action dated May 18, 2011 is inappropriate and irrelevant to the patentability of the present invention.

Under (a) above, the Requirement for information is directed to any products or services that have incorporated the claimed subject matter and any and all documentation regarding DuPont's development and prior use of the materials identified as T743, T749 and 98West/4 (hereinafter "DuPont fibers"). Applicant respectfully submits withdrawal of this requirement for information based on at least two reasons, as expressed below.

First, Applicant's understanding is that any information that was publicly available prior to the priority date of the present application would be relevant to the patentability of the present invention. However, the requirement in (a) is not limited in time and is thus overly broad since it would encompass information that clearly does not qualify as prior art. As such, the requirement should be rescinded or amended to specify which period in time is applicable to the

request and specify that the materials were publicly available. Second, Applicant requests that the Examiner give proper weight to the sworn Declaration previously submitted by John Barnes. In this sworn Declaration, it is clearly stated that the fibers identified as T743, T749 and 98West/4 were not commercially available prior to the priority date of the present application. Accordingly, no products could have been available which included the DuPont Fibers, which satisfies the requirement for information.

Under (b) and (c) above, Applicant is required to provide any and all documentation of agreements with DuPont to perform testing and use of the DuPont Fibers. To the extent that any such agreements exist as noted in (b) and (c), they are the confidential information of DuPont, INVISTA and/or APA Parafricta Ltd. Accordingly, this requirement for information is irrelevant to patentability and not appropriate subject matter for a request for information.

Under (d) above, Applicant is required to provide any and all documentation "that the materials identified in applicant's specification by DuPont product numbers T743, T749 and 98West/4 were not commercially available prior to the priority date of the instant application." As an initial point, important to note is that the Examiner has requested evidence in support of a negative that the DuPont Fibers "were not commercially available prior to the priority date of the instant application." A negative cannot be proven. However, the Declaration of John Barnes states that the materials were not commercially available at that time. Accordingly, the requirement for information has either already been addressed by the Declaration of John Barnes or requires clarification.

Under (e) above, Applicant is required to provide any and all information showing that the DuPont Fibers were not known to be used as medical protection sheeting. As an initial point, important to note is that the Examiner has again requested evidence in support of a negative that the DuPont Fibers "were not known to be used as medical protection sheeting." As previously stated, a negative cannot be proven. However, the Declaration of Michael Clark states that the DuPont Fibers differ from the products of the present invention according to the structural elements required of the inventive products. Accordingly, the requirement for information has either already been addressed by the Declaration of Michael Clark or requires clarification.

Action Requested

Applicant requests that the Requirement for Information be **withdrawn** for the reasons expressed above.

Conclusion

For the reasons stated above, Applicant requests that the Requirement for Information be withdrawn. The Director is invited to telephone the undersigned to discuss this Petition.

The Commissioner is hereby authorized to charge payment of any fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Date: July 18, 2011

Respectfully submitted,

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